

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 97-191

Sales and Use Tax

For The Period: 1993 Through 1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales/Use Tax – Unitary Transaction

Authority: IC 6-2.5-1-1; IC 6-2.5-1-2; IC 6-2.5-4-1; 45 IAC 2.2-1-1; Cowden & Sons Trucking, Inc. v. Indiana Department of State Revenue, 575 N.E.2d 718 (Ind. Tax 1991).

The taxpayer protests the proposed assessment of sales/use tax.

II. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

The taxpayer is in the business of selling and installing various systems like smoke detecting systems, alarm systems, vacuum systems, intercom systems, and telephone systems. The taxpayer enters into four different types of sales with its customers. The four scenarios are as follows:

1. Sales of goods and labor in which the taxpayer prepares the site for installation, then installs its own equipment.
2. Sales of "roughing" which require the taxpayer to prepare the site for installation, but another company actually sells and installs the equipment for the customer.
3. Sales where the taxpayer prepares the site for installation and installs equipment sold to the customer by a third party.
4. Sales of equipment.

The taxpayer protests sales tax within the first category. The Department assessed sales tax on the labor charges paid by the taxpayer's customers. In this category of sales the taxpayer remitted sales tax on the equipment portion of the sale only. Initial estimates given to the taxpayer's customers do not contain a breakdown of materials and labor. Due to the nature of the work in which the taxpayer engages, estimates are just preliminary, and exact breakdowns are impractical at this stage. However, the taxpayer's invoices separate charges for product and services.

I. Sales/Use Tax – Unitary Transaction

DISCUSSION

A unitary transaction includes all items of personal property and services which are finished under a single order or agreement and for which a total combined charge or price is calculated. IC 6-2.5-1-1(a).

For purposes of imposing sales tax, a unitary transaction must qualify as a retail transaction and the taxpayer must qualify as a retail merchant. IC 6-2.5-1-2. Indiana Code 6-2.5-4-1(a) defines a retail merchant as someone making a retail transaction while engaged in selling at retail. It is undisputed that the taxpayer is a retail merchant making retail transactions. Also, there is no dispute that the systems sold by the taxpayer are subject to sales tax, as taxpayer has remitted sales tax on their products. However, the taxability of services rendered by the taxpayer is the central issue to be determined.

Under 6-2.5-1-1 and 45 IAC 2.2-1-1 a transaction involving a retail sale of property in conjunction with a service can be classified as a unitary transaction. That transaction is subject to Indiana sales tax on the entire charge. The taxpayer asserts that the charges it imposed for services associated with the installation of its products were divisible and extricable from the corresponding retail transactions and therefore the labor charges were exempt from Indiana sales tax. The taxpayer points to the fact that it often only installed or only sold retail property as evidence that the labor and the product are extricable from each other. The taxpayer also argues that although the sales are a single agreement, nonetheless the installation and the product are segregated, and that the two are bargained for separately. The taxpayer also provides a textual reading of Indiana Code 6-2.5-1-1, arguing that it applies to purchase agreements and not invoices since the code refers only to "orders or agreements." Per the taxpayer, since it provides invoices, the labor charges do not come within the scope of the law.

The taxpayer argues that Cowden & Sons v. Dept. of State Revenue, 575 N.E.2d 718 (Ind. Tax 1991), is controlling on the issue of unitary transactions. The taxpayer reads Cowden to stand for the proposition that a taxpayer can avoid coming within the scope of IC 6-2.5-1-1 by separately stating labor and product charges. The

Department also relies on Cowden, though reaching a different conclusion.

The Department notes that in Cowden the Tax Court announced that “the legislature intends to tax services rendered in retail unitary transactions only if the transfer of property and rendition of services is inextricable and indivisible.” Id. at 722. The Tax Court then stated “the divisibility of a transaction is indicated by the temporal relationship between the provision of the services and the transfer of the property . . . services performed prior to a transfer of property indicate an inextricable transaction wholly subject to sales tax” Id. If we apply the above case law to the taxpayer, we find that services occur prior to the transfer of property. This is backed up by the taxpayer’s brief, which at page two states that the taxpayer “prepares the site for installation” and “then installs its own equipment.” Therefore, according to the Department, any charges for these services are subject to sales tax because the transaction is inextricable under Indiana Code 6-2.5-4-1(e)(2). With regard to the taxpayer’s argument that “invoices” do not come within the rubric of the code, the Department argues that the taxpayer is making an argument based on semantics, and that “agreement” is a general catchall phrase that includes invoices.

FINDING

The taxpayer’s protest is denied.

II. Tax Administration – Penalty

DISCUSSION

The taxpayer protests the assessed penalty. Indiana Code 6-8.1-10-2.1 subjects a taxpayer to a ten percent (10%) penalty if the taxpayer incurs a deficiency that is due to negligence. However, IC 6-8.1-10-2.1 also states, “If a person subject to the penalty imposed under this section can show that the failure . . . was due to reasonable cause and not due to willful neglect, the Department shall waive the penalty.” The taxpayer has established that the deficiency was due to reasonable cause. The audit was the taxpayer’s first audit, and the protested issue regarding unitary transaction had never arisen. The taxpayer exercised due diligence in collecting sales tax on the three other types of transactions.

FINDING

The taxpayer’s protest is sustained.